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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) No. CR-87-00856 DLJ
11)
Plaintiff,)
12)
vs.) STIPULATION AND **ORDER** TO
13) CONVERT SPECIAL PAROLE TO
KENNETH JAY OWEN,) SUPERVISED RELEASE AND
14) TERMINATE SUPERVISION
Defendant.)
15 _____)

16
17 **INTRODUCTION**

18 The parties hereby stipulate that the terms of special parole to which defendant Kenneth
19 Jay Owen was sentenced should be converted to terms of supervised release pursuant to *Gozlon-*
20 *Peretz v. United States*, 498 U.S. 395, 404 (1991). Because Mr. Owen already has served on
21 supervision the five years of the converted supervised-release terms, the parties also stipulate
22 that the Court should terminate Mr. Owen's supervision.

23 **DISCUSSION**

24 **A. Facts**

25 Mr. Owen was convicted in this Court of two counts of distribution and possession with
26 the intent to distribute methamphetamine, violations of 21 U.S.C. § 841(a)(1), and one count of

1 simple possession, a violation of 21 U.S.C. § 844(a). The conduct of which he was convicted for
2 the relevant offenses occurred in September and October of 1987. On September 9, 1988,
3 United States District Judge J.P. Vukasin sentenced Mr. Owen to 20 years of imprisonment with
4 a 10-year term of special parole to follow on each of the two § 841 counts, with the sentences to
5 run consecutively.

6 Mr. Owen was released from custody on July 9, 2004, and began serving his period of
7 parole under the jurisdiction of the United States Parole Commission ["Commission"]. On July
8 31, 2009, after more than five years on supervision, the Commission ordered early termination of
9 Mr. Owen's parole, under 18 U.S.C. § 4211(c)(1) and 28 C.F.R. § 2.43(c)(1), because of his
10 satisfactory performance and response to supervision. Mr. Owen then began serving his term of
11 special parole, which, according to the Commission, is set to terminate on November 9, 2028.

12 **B. Discussion**

13 In *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991), the Supreme Court held that
14 drug offenders who committed offenses between October 27, 1986, and November 1, 1987,
15 should have been sentenced to supervised release, under § 1002 of the Anti-Drug Abuse Act of
16 1986, rather than special parole. Until the Supreme Court decided which form of post-
17 imprisonment supervision applied during this period, the courts of appeal were split on the
18 question. *Gozlon-Peretz*, 498 U.S. at 399. Accordingly, some offenders, like Mr. Owen, were
19 sentenced incorrectly.

20 Under the version of 21 U.S.C. § 841 in effect at the time of his conviction, Mr. Owen
21 should have been sentenced to a five-year term of supervised release for each of his two § 841
22 convictions. Under 18 U.S.C. § 3624(e), the two five-year terms of supervised release must be
23 concurrent. Also under that statute, Mr. Owen's term of supervised release began running when
24 he was released from imprisonment on July 9, 2004. Because Mr. Owen has served more than
25 five years on supervision, he has completed his five-year period of supervised release and should
26 be terminated from supervision.

CONCLUSION

For the reasons stated herein, the parties hereby stipulate that Mr. Owen's sentence in this case should be amended to reflect a five-year term of supervised release on Count One and a five-year term of supervised release on Count Two, with the supervised-release term on Count Two to run concurrent to the supervised-release term on Count One. The supervised-release term is to begin upon Mr. Owen's release from imprisonment on July 9, 2004. His five-year supervised-release term thus terminated as of July 8, 2009.

Respectfully submitted,

Dated: May 7, 2010

_____/S/_____
ANGELA HANSEN
Assistant Federal Public Defender

Dated: May 7, 2010

_____/S/_____
MAUREEN BESSETTE
Assistant United States Attorney

Dated: May 7, 2010

_____/S/_____
MARK MESSNER
United States Probation Officer, Specialist

I hereby attest that I have on file all holograph signatures for any signatures indicated by a "conformed" signature (/S/) within this e-filed document.

/S/ ANGELA M. HANSEN

ORDER

Based on the stipulation of the parties above, the Court hereby amends Mr. Owen's sentence in this case to reflect a five-year term of supervised release on Count One and a five-year term of supervised release on Count Two, with the supervised-release term on Count Two to run concurrent to the supervised-release term on Count One. Because the supervised-release term began upon Mr. Owen's release from imprisonment on July 9, 2004, his five-year supervised-release term expired in July 2009. For this reason, it is further ordered that Mr. Owen's supervised release is terminated.

IT IS SO ORDERED.

May 11, 2010
Date


HON. D. LOWELL JENSEN
United States District Judge